

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ARLAN B. CLINESMITH,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Case No. CIV-13-90-F
	)	
TERRY MARTIN, Warden,	)	
	)	
Respondent.	)	

**ORDER**

On October 18, 2013, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation, wherein he recommended that petitioner, Arlan B. Clinesmith's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. Magistrate Judge Purcell therein advised the parties of their respective right to file an objection to the Report and Recommendation with the court clerk by November 7, 2013 and further advised the parties that failure to timely object to the Report and Recommendation would waive appellate review of the recommended ruling.

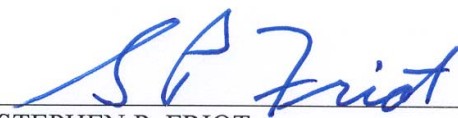
To date, no objection to the Report and Recommendation has been filed and no extension of time to file an objection has been sought. With no objection being filed within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Because the court is entering a final order adverse to petitioner on his habeas petition, the court must determine whether petitioner is entitled to a certificate of appealability. *See*, Rule 11(a), Rules Governing Section 2254 Cases in the United States District Courts. Petitioner is entitled to a certificate of appealability only upon

making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues petitioner seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a district court has rejected the constitutional claims on the merits,. . .[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* When a prisoner’s habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner’s claims, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Petitioner has not made the requisite showing for a certificate of appealability. The court therefore concludes that a certificate of appealability should be denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on October 18, 2013 (doc. no. 25) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Petitioner, Arlan B. Clinesmith’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**. A certificate of appealability is **DENIED**.

DATED November 21, 2013.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE